IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22302 of 2004

AND

WRIT PETITION NO : 22579 of 2004

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WRIT PETITION NO : 22302 of 2004

Between:

J. Chennakesavulu, S/o. J. Chennaiah,
Customs and Central Excise, Hyderabad II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.

..... PETITIONER

AND

1 The Chief Commissioner of Customs & Central Excise, Hyderabad Zone,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
2 The Commissioner of Customs & Central Excise, Hyderabad II
Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari, calling for the records relating to the order dated 14/06/2004 in OA NO. 1452 of 2003, on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same and also set aside the order of the 2nd respondent dated 18/11-2003 rejecting the request of the petitioner to permit him to engage a counsel and to appear for personal hearing along with his

counsel and consequently permit the petitioner to appear along with his counsel during the personal hearing before the 2nd respondent and further direct the 1st respondent to constitute one disciplinary authority to hear the cases of all the 13 officers.

Counsel for the Petitioner: MR.E.MANOHAR, SENIOR COUNSEL APPEARING FOR MR.P.KAMLAKAR.

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (Standing Counsel for Central Government)

WRIT PETITION NO : 22579 of 2004

Between:

1 V. Nagaraju, S/o. V. Subrahmanyam,
Customs and Central Excise, Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
2 K. Prakasa Rao, S/o. Chantiabbai,
Customs and Central Excise, Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
3 T. Krishnamurthy, S/o. T.L.N. Sharma,
Customs and Central Excise, Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
4 M. Venkataramana, S/o. M. Venkata Rayudu,
Customs and Central Excise, Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.

..... PETITIONERS

AND

1 The Chief Commissioner of Customs & Central Excise, Hyderabad Zone,
L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
2 The Commissioner of Customs & Central Excise, Hyderabad-II
Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to the order dated 14-6-2004 in OA NO. 1452 of 2003, on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same and also set aside the order of the 2nd respondent dated 20-11-2003 rejecting the request of the petitioners to permit them to engage a counsel and to appear for personal hearing along with their counsel and consequently permit the petitioners to appear along with their counsel during the personal hearing before the 2nd respondent and further direct the 1st respondent to constitute one disciplinary authority to hear the cases of al the 13

officers.

Counsel for the Petitioner: MR.E.MANOHAR, SENIOR COUNSEL APPEARING FOR MR.P.KAMLAKAR.

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (Standing Counsel for Central Government)

The Court made the following:

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COMMON ORAL ORDER: (per GB.J.)

Both these Writ Petitions can be disposed of by a common order as they arise out of the common order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.Nos.1452 and 1490 of 2003, dated 14.6.2004.

2. The petitioners are working as Superintendents/Inspectors. While so, criminal proceedings were initiated against them and other persons in C.C.No.11 of 1999 on the file of Special Judge for CBI Cases, Hyderabad and they were convicted by the Judgment dated 25.1.2002. Against the said Judgment, the petitioners filed Criminal Appeal No.82 of 2002 before this Court and the same is pending.

3 . Consequent on the conviction by the trial Court, they were issued with show cause notices on 7.2.2002 as to why they should not be imposed with appropriate punishment. The said show cause notices were challenged before the Tribunal. However, the Tribunal disposed of the O.As. directing the authorities to give personal hearing. At that stage the petitioners filed an application to grant permission to engage a counsel to submit their case through the counsel concerned. The said representations were rejected by the authority by the orders dated 18.11.2003 and 20.11.2003. The said orders came to be challenged before the Tribunal in the above O.As.

4 . The learned Tribunal, after considering the matter, held that since the authority exercised his discretion, such discretion cannot be interfered with and dismissed the O.As. Assailing the said order, the present Writ Petitions have been filed.

5. The learned Senior Counsel Mr.E.Manohar appearing on behalf Mr.P.Kamalakar for the petitioners submits that the order of the Tribunal is wholly illegal and not sustainable in law. When the discretion is vested with the authority, the Tribunal failed to consider whether such discretion was properly exercised or not and therefore the order is liable to be set aside.

6. On the other hand the learned Standing Counsel for Central Government reiterates the stand that when it is open for the authority to exercise his discretion, it cannot be subjected to judicial review and therefore the order of the Tribunal cannot be said to be either illegal or irregular.

7. The learned Senior Counsel would also submit that the petitioners also made an application to transfer the disciplinary proceedings to one disciplinary authority as the joint enquiry is being held and the charges are similar and identical in all respects and the 2nd respondent-Chief Commissioner of Customs and Central Excise, Hyderabad-II Commissionerate appears to have rejected the case of the petitioners for engaging a counsel to defend their case; in which event it will cause prejudice to the petitioners as different authorities may tend to impose different punishments within their discretion and that causes discriminatory treatment to the similarly situate persons.

8. We have given anxious consideration to the contentions raised by both the learned counsel.

9. It is brought to the notice of this Court that the delinquent employees are spread over under various disciplinary authorities. While in case of three Commissioners under whom certain other employees are facing disciplinary enquiry made a similar request and they have granted permission to engage a counsel, but in the cases on hand only the 2nd respondent refused to grant such permission without giving any proper reasons.

10. While we note that discretion is available with the authorities, but at the same time it has to be exercised in a judicious manner. Admittedly in the instant cases when similarly situate persons were granted permission by other coordinating Officers having disciplinary jurisdiction for engaging counsel, we do not find any reason for the 2nd respondent not to follow the same principle more especially when all the employees are facing similar and identical charges. Under those

circumstances we find that the 2nd respondent failed to consider this aspect and rejected the case of the petitioners on the ground that there was no need for them to engage the counsel. The need would be felt by the concerned employee but not the authority conducting disciplinary enquiry. Therefore, the order of the Tribunal is liable to be set aside and we do so accordingly. Consequently the 2nd respondent is directed to reconsider the matter in a proper perspective more especially in the wake of the fact that other similarly situate employees were granted permission by their respective disciplinary authorities. 2nd respondent shall pass appropriate orders within a period of two (02) weeks from the date of receipt of a copy of this order.

11. It is also noticed that the 1st respondent rejected the case for clubbing of the cases and for appointment of a common disciplinary authority. Rule 19 of the CCS (CCA) Rules, 1965, is a special provision in respect of imposition of penalty in cases of conviction by criminal Courts. In such a situation it would be appropriate for the 2nd respondent to reconsider the matter so as to maintain the uniformity in respect of the punishments that may be awarded inasmuch as the employees are facing similar and identical charges. We hope that the 1st respondent will reconsider his decision in the interest of administration and also keeping in view the provisions of the CCS (CCA) Rules.

12. Both the Writ Petitions are disposed of with the directions indicated above. No costs.

(G.BIKSHAPATHY, J.)

9th December, 2004.

(P.S.NARAYANA, J.)

SSR

To

1 The Chief Commissioner of Customs & Central Excise, Hyderabad Zone, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
2 The Commissioner of Customs & Central Excise, Hyderabad II Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.

3 The Registrar, Central Administrative Tribunal, Hyderabad.

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